

Our response: Under section 4(b)(1)(A) of the Act, we must base a listing decision solely on the best scientific and commercial data available. The legislative history of this provision clearly states the intent of Congress to ensure that listing decisions are “* * * based solely on biological criteria and to prevent non-biological criteria from affecting such decisions * * *” (see response to Comment PR8 for more details). Therefore, we did not consider the economic impacts of listing the polar bear. In our Notice of Interagency Cooperative Policy of Endangered Species Act Section 9 Prohibitions (59 FR 34272), we stated our policy to identify, to the extent known at the time a species is listed, specific activities that will not be considered likely to result in violation of section 9 of the Act. In accordance with that policy, we have published in this final rule a list of activities we believe will not result in violation of section 9 of the Act (see “Available Conservation Measures” section of this rule for further discussion). However, because the polar bear is listed as a threatened species and the provisions of section 4(d) of the Act authorize the Service to implement, by regulation, those measures included in section 9 of the Act that are deemed necessary and advisable to provide for the conservation of the species, please consult the special rule for the polar bear that is published in today’s edition of the **Federal Register** for all of the prohibitions and exceptions that apply to this threatened species.

Comment 71: Several comments were received pertaining to the effectiveness of listing the polar bear under the Act, specifically whether listing would or would not contribute to the conservation of the species.

Our response: The potential efficacy of a listing action to conserve a species cannot be considered in making the listing decision. The Service must make its determination based on a consideration of the factors affecting the species, utilizing only the best scientific and commercial information available and is not able to consider other factors or impacts (see response to Comment 70 for additional discussion). Listing recognizes the status of the species and invokes the protection and considerations under the Act, including regulatory provisions, consideration of Federal activities that may affect the polar bear, potential critical habitat designation. The Service will also develop a recovery plan and a rangewide conservation strategy. Please see the responses to comments under “Issue 10: Recovery” as well as the

“Available Conservation Measures” section of this rule for further discussion.

Comment 72: Listing under the Act may result in additional regulation of industry and development activities in the Arctic. A discussion of incidental take authorization should be included in the listing rule. Some comments reflected concern regarding the perceived economic implications of regulatory and administrative requirements stemming from listing.

Our response: Section 7(a)(2) of the Act, as amended, requires Federal agencies to consult with the Service to ensure that the actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of listed species. Informal consultation provides an opportunity for the action agency and the Service to explore ways to modify the action to reduce or avoid adverse effects to the listed species or designated critical habitat. In the event that adverse effects are unavoidable, formal consultation is required. Formal consultation is a process in which the Service determines if the action will result in incidental take of individuals, assesses the action’s potential to jeopardize the continued existence of the species, and develops an incidental take statement. Formal consultation concludes when the Service issues a biological opinion, including any mandatory measures prescribed to reduce the amount or extent of incidental take of the action. In the case of marine mammals, the Service must also ensure compliance with regulations promulgated under section 101(a)(5) of the MMPA. Authorization of incidental take under the MMPA is discussed under Factor D. Actions that are already subject to section 7 consultation requirements in the Arctic, some of which may involve the polar bear, include, but are not limited to: Refuge operations and research permits; U.S. Army Corps of Engineers and Environmental Protection Agency permitting actions under the Clean Water Act and Clean Air Act; Bureau of Land Management land-use planning and management activities including onshore oil and gas leasing activities; Minerals Management Service administration of offshore oil and gas leasing activities; and Denali Commission funding of fueling and power generation projects.

Issue 10: Recovery

Comment 73: Several comments identified additional research needs related to polar bears, their prey, indigenous people, climate, and anthropogenic and cumulative effects

on polar bears. Some specific recommendations include increased research and continued monitoring of polar bear populations and their prey, monitoring of polar bear harvest, and development of more comprehensive climate change models.

Our response: We agree that additional research would benefit the conservation of the polar bear. The Service will continue to work with the USGS, the State of Alaska, the IUCN/PBSG, independent scientists, indigenous people, and other interested parties to conduct research and monitoring on Alaska’s shared polar bear populations. While the Service does not have appropriate resources or management responsibility for conducting climate research, we have and will continue to work with climatologists and experts from USGS, NASA, and NOAA to address polar bear-climate related issues. Furthermore, we will consider appropriate research and monitoring recommendations received from the public in the development of a rangewide conservation strategy.

Comment 74: Several commenters provided recommendations for recovery actions, to be considered both in addition to and in lieu of listing. Other commenters cited the need for immediate recovery planning and implementation upon completion of a final listing rule.

Our response: As discussed throughout this final rule, the Service has been working with Range countries on conservation actions for the polar bears for a number of years. Due to the significant threats to the polar bear’s habitat, however, it is our determination that the polar bear meets the definition of a threatened species under the Act and requires listing. With completion of this final listing rule, the Service will continue and expand coordination with the Range countries regarding other appropriate international initiatives that would assist in the development of a rangewide conservation strategy. However, it must be recognized that the threats to the polar bear’s habitat may only be addressed on a global level. Recovery planning under section 4(f) of the Act will be limited to areas under U.S. jurisdiction, since the preparation of a formal recovery plan would not promote the conservation of polar bears in foreign countries that are not subject to the implementation schedules and recovery goals established in such a plan. However, the Service will use its section 8 authorities to carry out conservation measures for polar bears in cooperation with foreign countries.